SUPREME COURT OF THE UNITED STATES.

No. 252.—October Term, 1923.

First National Bank in St. Louis Plaintiff in Error, *vs.* State of Missouri, at the information of Jesse W. Barrett, Attorney General.	In Error to the Supreme Court of the State of Missouri.

[January 28, 1924.]

Mr. Justice Sutherland delivered the opinion of the Court.

The State of Missouri brought this proceeding in the nature of *quo warranto* in the State Supreme Court against the plaintiff in error to determine its authority to establish and conduct a branch bank in the City of St. Louis. The information avers that the bank was organized under the laws of the United States and was and is engaged in a general banking business in that city at a banking house, the location of which is given; that, in contravention of its charter and of the act of Congress under which it was incorporated, it has illegally opened and is operating a branch bank for doing a general banking business in a separate building several blocks from its banking house, and proposes to open additional branch banks at various other locations, and that this is in violation of a statute of the State expressly prohibiting the establishment of branch banks. The prayer is that, upon final hearing, the bank be ousted from the privilege of operating this branch bank or any other. A demurrer to the information was interposed and the cause thereupon submitted. The contention of the State was upheld and judgment rendered in accordance with the prayer. — Mo. —.

The correctness of the judgment is challenged under numerous specifications of error presenting federal questions, which, for the purposes of the case, may be considered under two heads: (1) Whether the state statute is valid as applied to national banks; and (2) Whether a proceeding to call a national bank to account

for acts of the kind here alleged may be maintained by the State, and whether the form of remedy pursued is sustainable.

First. The Missouri statute (§ 11737, R. S. Mo., 1919) provides "that no bank shall maintain in this state a branch bank or receive deposits or pay checks except in its own banking house." That the facts alleged in the information bring the case within that part of the statute which prohibits the maintenance of branch banks and that the statute applies to national banks is conclusively established by the decision of the State court, and we confine ourselves to the inquiry whether, as thus applied, the statute is valid.

National banks are brought into existence under federal legislation, are instrumentalities of the federal government and are necessarily subject to the paramount authority of the United States. Nevertheless, national banks are subject to the laws of a State in respect of their affairs unless such laws interfere with the purposes of their creation, tend to impair or destroy their efficiency as federal agencies or conflict with the paramount law of the United States. *National Bank* v. *Commonwealth*, 9 Wall. 353, 362; *Davis* v. *Elmira Savings Bank*, 161 U. S. 275, 283. These two cases are cited and followed in the later case of *McClellan* v. *Chipman*, 164 U. S. 347, 357, and the principle which they establish is said to contain a rule and an exception, "the rule being the operation of general state laws upon the dealings and contracts of national banks, the exception being the cessation of the operation of such laws whenever they expressly conflict with the laws of the United States or frustrate the purpose for which national banks were created, or impair their efficiency to discharge the duties imposed upon them by the law of the United States." See also *Waite* v. *Dowley*, 94 U. S. 527, 533. The question is whether the Missouri statute falls within the rule or within the exception.

Does it conflict with the laws of the United States? In our opinion, it does not. The extent of the powers of national banks is to be measured by the terms of the federal statutes relating to such associations, and they can rightfully exercise only such as are expressly granted or such incidental powers as are necessary to carry on the business for which they are established. *Bullard* v. *Bank*, 18 Wall. 589, 593; *Logan County Bank* v. *Townsend*, 139 U. S. 67, 73; *California Bank* v. *Kennedy*, 167 U. S. 362, 366. Among other things the federal law (R. S., § 5154) provides that the organization certificate of the association shall specifically state

"the place where its operations of discount and deposit are to be carried on, designating the state, territory or district and the particular county, city, town or village." By another provision (R. S., § 5190) it is required that "the usual business of each national banking association shall be transacted at an office or banking house located in the place specified in its organization certificate." Strictly, the latter provision, employing, as it does, the article "an", to qualify words in the singular number, would confine the association to one office or banking house. We are asked, however, to construe it otherwise in view of the rule that "words importing the singular number may extend and be applied to several persons or things." R. S., § 1. But obviously this rule is not one to be applied except where it is necessary to carry out the evident intent of the statute. See *Garrigus* v. *Board of Commissioners*, 39 Ind. 66, 70; *Moynahan* v. *City of New York*, 205 N. Y. 181, 186. Here there is not only nothing in the context or in the subject matter to require the construction contended for, but other provisions of the national banking laws are persuasively to the contrary. By Section 5138, R. S., the minimum amount of capital is fixed in proportion to the population of the place where the bank is located. If it had been intended to allow the establishment by an association of not one bank only but, in addition, as many branch banks as it saw fit, it is remarkable, to say the least, that there should have been no provision for adjusting the capital to the latter contingency or for determining how or under what circumstances such branch banks might be established or for regulating them. Section 5155, R. S., provides that it shall be lawful for a state bank "having branches, the capital being joint and assigned to and used by the mother-bank and branches in definite proportions, to become a national banking association . . . and to retain and keep in operation its branches . . . the amount of circulation . . . to be regulated by the amount of capital assigned to and used by each." This provision, confined by its terms, as it is, to existing State institutions, may be fairly considered as constituting an exception to the general rule, and the presence of safeguarding limitations in the excepted case, with their entire absence from the statute otherwise, goes far in the direction of confirming the conclusion that the general rule does not contemplate the establishment of branch banks. This apparently was the interpretation of Congress itself, since in two instances at least

special legislation was deemed necessary to allow the establishment of branch banks, viz: at the Chicago Exposition, in 1892, c. 71, 27 Stat. 33, and at the St. Louis Exposition, in 1901, c. 864, 31 Stat. 1444, § 21, the existence of the branch bank in each instance being expressly limited to the period of two years.

The construction of the executive officers charged with the administration of the law has been, with substantial uniformity, to the same effect, and in this view the Department of Justice, in a well considered opinion, rendered May 11, 1911, concurred. Lowry National Bank—Establishment of Branches. 29 Op. Atty Genl. 81.*

This interpretation of the statute by the legislative department and by the executive officers of the government would go far to remove doubt as to its meaning if any existed. See *Tiger* v. *Western Investment Co.*, 221 U. S. 286, 309; *United States* v. *Hermanos y Compañia*, 209 U. S. 337, 339.

But it is said that the establishment of a branch bank is the exercise of an incidental power conferred by Section 5136 R. S. by which national banking associations are vested with "all such incidental power as shall be necessary to carry on the business of banking." The mere multiplication of places where the powers of a bank may be exercised is not, in our opinion, a necessary incident of a banking business, within the meaning of this provision. Moreover, the reasons adduced against the existence of the power substantively are conclusive against its existence incidentally; for it is wholly illogical to say that a power which by fair construction of the statutes is found to be denied, nevertheless exists as an incidental power. Certainly, an incidental power can avail neither to create powers which, expressly or by reasonable implication, are withheld nor to enlarge powers given; but only to carry into effect those which are granted.

Clearly, the state statute, by prohibiting branches, does not frustrate the purpose for which the bank was created or interfere with the discharge of its duties to the government or impair its efficiency as a federal agency. This conclusion would seem to be

*Our attention is directed to a later opinion of the Attorney General, dated October 3, 1923, which, although in terms affirming the earlier opinion, announces a limited rule which does not seem to be in precise agreement with it. To the extent of the disagreement, however, we accept the view of the earlier opinion.

self evident, but if warrant for it be needed, it sufficiently lies in the fact that national banking associations have gone on for more than half a century without branches and upon the theory of an absence of authority to establish them. If the non-existence of such branches or the absence of power to create them has operated or is calculated to operate to the detriment of the government, or in such manner as to interfere with the efficiency of such associations as federal agencies, or to frustrate their purposes, it is inconceivable that the fact would not long since have been discovered and steps taken by Congress to remedy the omission.

Second. The state statute as applied to national banks is, therefore, valid, and the corollary that it is obligatory and enforceable necessarily results, unless some controlling reason forbids; and, since the sanction behind it is that of the State and not that of the National Government, the power of enforcement must rest with the former and not with the latter. To demonstrate the binding quality of a statute but deny the power of enforcement involves a fallacy made apparent by the mere statement of the proposition, for such power is essentially inherent in the very conception of law. It is insisted with great earnestness that the United States alone may inquire by *quo warranto* whether a national bank is acting in excess of its charter powers, and that the State is wholly without authority to do so. This contention will be conceded since it is plainly correct, but the attempt to apply it here proceeds upon a complete misconception of what the State is seeking to do, a misconception which arises from confounding the relief sought with the circumstances relied upon to justify it. The State is neither seeking to enforce a law of the United States nor endeavoring to call the bank to account for an act in excess of its charter powers. What the State is seeking to do is to vindicate and enforce its own law, and the ultimate inquiry which it propounds is whether the bank is violating that law, not whether it is complying with the charter or law of its creation. The latter inquiry is preliminary and collateral, made only for the purpose of determining whether the state law is free to act in the premises or whether its operation is precluded in the particular case by paramount law. Having determined that the power sought to be exercised by the bank finds no justification in any law or authority of the United States, the way is open for the enforce-

ment of the state statute. In other words, the national statutes are interrogated for the sole purpose of ascertaining whether anything they contain constitutes an impediment to the enforcement of the state statute, and the answer being in the negative, they may be laid aside as of no further concern.

The application of the state statute to the present case and the power of the State to enforce it being established, the nature of the remedy to be employed is a question for state determination; and the judgment of the State court that the one here employed was appropriate is conclusive unless it involves a denial of due process of law, which plainly it does not. We are not concerned with the question whether an information in the nature of *quo warranto*, according to the general principles of the law, is in fact appropriate. It is enough that the Supreme Court of the State has so held. *Standard Oil Co.* v. *Missouri*, 224 U. S. 270, 287; *Twining* v. *New Jersey*, 211 U. S. 78, 110-111. In *Iowa C. R. Co.* v. *Iowa*, 160 U. S. 389, 393, this court said: "But it is clear that the Fourteenth Amendment in no way undertakes to control the power of a State to determine by what process legal rights may be asserted or legal obligations be enforced, provided the method of procedure adopted for these purposes gives reasonable notice and affords fair opportunity to be heard before the issues are decided. This being the case, it was obviously not a right, privilege or immunity of a citizen of the United States to have a controversy in the state court prosecuted or determined by one form of action instead of by another. . . . Whether the court of last resort of the State of Iowa properly construed its own constitution and laws in determining that the summary process under those laws was applicable to the matter which it adjudged, was purely the decision of a question of state law, binding upon this court." See also *Louisville & N. R. Co.* v. *Schmidt*, 177 U. S. 230, 236; *Hooker* v. *Los Angeles*, 188 U. S. 314, 318; *Rogers* v. *Peck*, 199 U. S. 425, 435.

The judgment of the Supreme Court of Missouri is therefore

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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Mr. Justice Van Devanter, dissenting.

I am constrained to dissent from the opinion and judgment just announced.

National Banks are corporate instrumentalities of the United States created under its laws for public purposes essentially national in character and scope. Their powers are derived from the United States, are to be exercised under its supervision and can be neither enlarged nor restricted by state laws. The decisions uniformly have been to this effect and have proceeded on principles which were settled a century ago in the days of the Bank of the United States.

In *McCulloch* v. *Maryland*, 4 Wheat. 316, where the status of that bank was drawn in question and elaborately discussed, this Court reached the conclusion that the Constitution invests the United States with authority to provide, independently of state laws, for the creation of banking institutions, and their maintenance at suitable points within the States, as a means of carrying into execution its fiscal and other powers. Chief Justice Marshall there dealt with the respective relations of the United States and the States to such an instrumentality in a very plain and convincing way. Among the other things, he said:

(p. 424) "After the most deliberate consideration, it is the unanimous and decided opinion of this Court, that the act to incorporate the Bank of the United States is a law made in pursuance of the constitution, and is a part of the supreme law of the land."

(p. 427) "It is of the very essence of supremacy to remove all obstacles to its action within its own sphere, and so to modify every power vested in subordinate governments, as to exempt its operations from their influence. This effect need not be stated in terms. It is so involved in the declaration of supremacy, so necessarily implied in it, that the expression of it could not make it more certain."

(p. 429) "The sovereignty of a State extends to everything which exists by its own authority, or is introduced by its permission; but does it extend to those means which are employed by Congress to carry into execution powers conferred on that body by the people of the United States? We think it demonstrable that it does not. Those powers are not given by the people of a single State. They are given by the people of the United States, to a government whose laws, made in pursuance of the constitution, are declared to be supreme."

In *Osborn* v. *Bank of the United States*, 9 Wheat. 738, there was drawn in question the validity of a state statute which, after reciting that the bank had been pursuing its operations contrary to a law of the State, provided that if the operations were continued the bank should be liable to specified exactions, called a tax. The statute was held invalid, the court saying:

(pp. 860, 861) "The Bank is not considered as a private corporation, whose principal object is individual trade and individual profit; but as a public corporation, created for public and national purposes. That the mere business of banking is, in its own nature, a private business, and may be carried on by individuals or companies having no political connexion with the government, is admitted; but the Bank is not such an individual or company. It was not created for its own sake, or for private purposes. . . . It is an instrument which is 'necessary and proper' for carrying on the fiscal operations of government."

The later legislation of Congress under which national banks are created and maintained stands on the same constitutional plane. When its validity has been assailed, or its operative force in a state questioned, the cases just mentioned have been regarded as settling the principles to be applied.

In *Farmers' and Mechanics' National Bank* v. *Dearing*, 91 U. S. 29, 31, the court referred to those cases, pronounced their reasoning applicable to the later legislation, and said:

(pp. 33-34) "The national banks organized under the act are instruments designed to be used to aid the government in the administration of an important branch of the public service. They

are means appropriate to that end. . . . Being such means, brought into existence for this purpose, and intended to be so employed, the States can exercise no control over them, nor in any wise affect their operation, except in so far as Congress may see proper to permit. Any thing beyond this is 'an abuse, because it is the usurpation of power which a single State cannot give'."

To the same effect are *Easton* v. *Iowa*, 188 U. S. 220, 230, 237; *Van Reed* v. *People's National Bank*, 198 U. S. 554, 557; *First National Bank* v. *Union Trust Co.*, 244 U. S. 416, 425; and *First National Bank* v. *California*, 262 U. S. 366, 369. Of special pertinence are the following excerpts from *Easton* v. *Iowa:*

(p. 229) "That legislation has in view the erection of a system extending throughout the country, and independent, so far as powers conferred are concerned, of state legislation which, if permitted to be applicable, might impose limitations and restrictions as various and as numerous as the States."

(pp. 231-232) "It thus appears that Congress has provided a symmetrical and complete scheme for the banks to be organized under the provisions of the statute.

"It is argued by the learned Attorney General on behalf of the State of Iowa that 'the effect of the statute of Iowa is to require of the officers of all banks within the State a higher degree of diligence in the discharge of their duties. It gives to the general public greater confidence in the stability and solvency of national banks, and in the honesty and integrity of their managing officers. It enables them better to accomplish the purposes and designs of the general government, and is an aid, rather than impediment, to their utility and efficiency as agents and instrumentalities of the United States.'

"But we are unable to perceive that Congress intended to leave the field open for the States to attempt to promote the welfare and stability of national banks by direct legislation. If they had such power it would have to be exercised and limited by their own discretion, and confusion would necessarily result from control possessed and exercised by two independent authorities."

It must be admitted that, in so far as the legislation of Congress does not provide otherwise, the general laws of a State have the same application to the ordinary transactions of a national bank,—such as incurring and discharging obligations to depositors, presenting drafts for acceptance or payment and giving notice of their dishonor, taking pledges for the repayment of money loaned, and receiving or making conveyances of real property,—that they have to like transactions of others. But not so of questions of corporate

power. As explained in *Easton* v. *Iowa* and other cases, their solution must turn on the laws of the United States under which the bank is created.

National banks, like other corporations, have such powers as their creator confers on them, expressly or by fair implication, and none other. *Thomas* v. *West Jersey R. R. Co.*, 101 U. S. 71, 82; *Logan County National Bank* v. *Townsend*, 139 U. S. 67, 73. Powers not so conferred are in effect denied; a prohibition is implied from the failure to grant them. *First National Bank* v. *National Exchange Bank*, 92 U. S. 122, 128; *California National Bank* v. *Kennedy*, 167 U. S. 362, 367. In short, all the powers of a national bank, like its right to exist at all, have their source in the laws of the United States. Only where those laws bring state laws into the problem,—as by enabling national banks to act as executors, administrators, etc., where that is permitted by state laws,—can the latter have any bearing on the question of corporate power—the privileges which the bank may exercise. *First National Bank* v. *Union Trust Co.*, 244 U. S. 416.

The proceeding now before us is an information in the nature of *quo warranto* brought in the Supreme Court of Missouri, whereby that State challenges the power of a national bank in the city of St. Louis to conduct a branch bank established by it in that city and asks that the bank be ousted from that privilege on the grounds, first, that establishing and conducting the branch is a violation of the bank's charter powers, and, secondly, that it is prohibited by a law of the State.

It is not claimed that the laws of the United States contain any provision whereby the privilege asserted by the bank is made to depend on the will or legislative policy of the State; nor do they in fact contain any such provision. Whether the bank has the privilege which it asserts is therefore in no way dependent on or affected by the state law, but turns exclusively on the laws of the United States. If they grant the privilege, expressly or by fair implication, no law of the State can abridge it or take it away. And if they do not grant it, they in effect prohibit it, and no law of the State can strengthen or weaken the prohibition. In either event nothing can turn on the state law. It simply has no bearing on the solution of the question.

In this situation the State is not, in my opinion, entitled to maintain the proceeding. It has no distinctive right to protect,

nor any applicable law to vindicate or enforce. The proceeding is one which may be maintained only in the public right. Here the State is not authorized to represent or to speak for the public. The bank is not a creation and instrumentality of the State, but of the national government. Its presence in the State is attributable to the national power, not to the State's permission. Whether the bank shall be kept within its legitimate powers and made to discontinue any departure from or abuse of them is a matter in which the people of all the States have the same interest, the bank being a national creation and instrumentality. The people of Missouri merely share in the common interest. "In that field it is the United States, and not the State, which represents them as *parens patriae*, when such representation becomes appropriate; and to the former, and not to the latter, they must look for such protective measures as flow from that status." *Massachusetts* v. *Mellon*, 262 U. S. 447, 486. It therefore is apparent that the State is here mistakenly appropriating to itself a function which belongs to the United States.

In *Tarble's Case*, 13 Wall. 397, 407, which possessed features making it particularly pertinent here, this Court pointed out the distinct and independent character of the national and state governments, within their respective spheres, and in that connection said:

"Neither can intrude with its judicial process into the domain of the other, except so far as such intrusion may be necessary on the part of the National government to preserve its rightful supremacy in cases of conflict of authority. In their laws, and mode of enforcement, neither is responsible to the other. How their respective laws shall be enacted; how they shall be carried into execution; and in what tribunals, or by what officers; and how much discretion, or whether any at all, shall be vested in their officers, are matters subject to their own control, and in the regulation of which neither can interfere with the other."

Another case apposite in principle is *Territory* v. *Lockwood*, 3 Wall. 236. It was a proceeding in the nature of *quo warranto* brought by the Territory of Nebraska to test the defendant's right to hold a Federal office in the Territory which he was charged with unlawfully usurping. This Court disposed of the matter by saying, p. 239:

"The right of the Territory to prosecute such an information as this would carry with it the power of amotion without the con-

currence of the government from which the appointment was derived. This the Territory can no more accomplish in one way than in another. The subject is as much beyond the sphere of its authority as it is beyond the authority of States as to the Federal officers whose duties are to be discharged within their respective limits. The right to institute such proceedings is inherently in the Government of the nation."

With great deference, I think the judgment below should be reversed on the ground that the State is without capacity to bring or maintain this proceeding, and the court below without authority to entertain it.

The CHIEF Justice and Mr. Justice BUTLER authorize me to say that they concur in this dissent.